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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,474	11/28/2003	Jaeon Jung	I3010-02USA	1022
35736	7590	02/22/2006	EXAMINER	
JHK LAW P.O. BOX 1078 LA CANADA, CA 91012-1078			FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 02/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/724,474	JUNG ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jonathan ML Foreman	3736

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 January 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5-8,10-13 and 15-23 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,8,10-13,17 and 19-22 is/are rejected.
- 7) Claim(s) 5-7,15,16,18 and 23 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/05 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 8, 12, 13, 17 and 19 - 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,353,868 to Joslin et al.

In regards to claims 1, 2, 8, 12, 13, 17 and 19 - 22, Joslin et al. discloses a device for collecting biological samples comprising nucleic acid including at least one collection protrusion comprising a tip (28) which is attached to the body of the device via a cap (14), at least one pad (60) for contacting the tip (Col. 4, lines 54 - 55), where the pad comprises chemical preservatives or enzyme inhibitors (Col. 3, lines 55 - 59), and at least one cap (14), and at least one aeration hole (Col. 4, lines 1 – 3). The tip is a wick, spoon, pick or swab (Col. 2, line 10). The device comprises plastic (Col. 4, lines 34 - 37). Joslin et al. discloses a liquid storage area (38) fitted with tubing (22). The chemical preservative or enzyme inhibitor includes a buffer (distilled water).

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4. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,353,868 to Joslin et al. in view of U.S. Patent Application Publication No. 2002/0161313 to Sak.

In regards to claims 10 and 11, Joslin et al. discloses a device for collecting biological samples, but fails to disclose written instructions on using device. However, Sak discloses a device for collecting biological samples and teaches instructions on using the device [0038]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include written instructions as taught by Sak with the device as disclosed by Joslin et al. in order to provide the user with a reference for using the device.

***Allowable Subject Matter***

5. Claims 5 – 7, 15, 16,18 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 10/19/05 have been fully considered but they are not persuasive. Applicant asserts that Joslin et al. fails to disclose the protrusion being attached to the body. However the Examiner disagrees. When the cap (14) is attached to the body (12) as shown in figure 2, the collection protrusion is attached to the body. Additionally, Applicant asserts that Joslin et al. fails to disclose an enzyme inhibitor or chemical preservative. However, Joslin et al. discloses the use of Stuart's Modified Media (Col. 5, lines 22 – 25). Stuarts's Modified Media includes Sodium Glycerophosphate, Calcium Chloride, Mercaptoacetic Acid and distilled water ([www.copanusa.com/html/aero\\_liq.html](http://www.copanusa.com/html/aero_liq.html)). At a minimum, the Mercaptoacetic Acid is an enzyme inhibitor in that certain enzymes can be denatured by Mercaptoacetic Acid.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMLF

  
MAX HINDENBURG  
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